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Municipal Corporations - Tort Liability - Purchase of Liability Insurance as Waiver of Immunity

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MUNICIPAL CORPORATIONS — TORT LIABILITY — PURCHASE OF LIABILITY INSURANCE AS WAIVER OF IMMUNITY—According to a well-established common law rule, a municipal corporation is immune to tort liability for wrongs committed in the performance of governmental or public functions, although it is liable for torts committed in the performance of corporate or proprietary functions.¹ This immunity generally cannot be waived without the authorization of the state legislature, and this authorization must

¹ 18 McQUILLIN, *MUNICIPAL CORPORATIONS*, 3d ed., §53.01 et seq. (1950). It should be noted that one method of distinguishing between governmental and proprietary functions is to say that a proprietary function is one which could be carried on as well by private citizens or corporations as by a political subdivision of the state, whereas a governmental function is one which is or could be carried on alone by political subdivisions of the state by reason of their governmental nature. The presence or absence of profit is another, though less reliable, difference.

be very clearly stated.² Interesting questions arise, therefore, when a municipality, with or without statutory authorization, takes out a liability insurance policy covering itself or its agents, or when it causes its agents to take out bonds for faithful performance. The questions concern both the power of the municipal corporation to carry such insurance, and the effect of carrying it both on the corporation and on the insurer.

Any discussion of these questions with reference to municipal corporations must necessarily involve a discussion of state political subdivisions other than municipal corporations, for a majority of the decisions on these questions have involved the latter. It should be noted that state political subdivisions other than municipal corporations also enjoy immunity from tort liability for wrongs committed in the performance of governmental or public functions,³ and that such immunity, as with that of municipalities, generally cannot be waived without express authorization from the legislature.⁴

I. *Power of Municipal Corporations to Insure Against Tort Liability*

A number of states, feeling a moral obligation to persons injured by torts committed by agents of their political subdivisions, have enacted statutes enabling such persons to obtain compensation for their injuries. Several states have accomplished this by making their governmental subdivisions liable for certain designated torts.⁵ Other states, without creating a primary liability on the part of governmental subdivisions, have accomplished a somewhat similar result through statutes authorizing⁶ or requir-

² *Hummer v. School City of Hartford City*, (Ind. App. 1953) 112 N.E. (2d) 891; *Rittmiller v. School District No. 84*, (D.C. Minn. 1952) 104 F. Supp. 187; *Marmor v. Port of New York Authority*, 203 Misc. 568, 116 N.Y.S. (2d) 177 (1952); *Contra*, *Bailey v. Knoxville*, (D.C. Tenn. 1953) 113 F. Supp. 3, noted in 52 MICH. L. REV. 457 (1954).

³ 5 LEGAL NOTES ON LOCAL GOVERNMENT 361 (1940).

⁴ See note 2 *supra*.

⁵ 18 McQUILLIN, MUNICIPAL CORPORATIONS, 3d ed., §53.03 (1950).

⁶ *California*: Cal. Civ. Code Ann. (Deering, 1951) §53056 (allows insurance for injuries around public property); *Indiana*: Ind. Stat. Ann. (Burns, 1952) §38-1819 (state motor vehicles can be covered); *Iowa*: Iowa Code (1954) §517A.1 (state motor vehicles); *Kentucky*: Ky. Rev. Stat. (1953) §160.310 (school bus drivers); *North Carolina*: N.C. Gen. Stat. (1952) § 160-191.1 (city can waive immunity as to motor vehicles up to the amount of the insurance); *North Dakota*: N.D. Rev. Code (Supp. 1949) §39-0108 (state or municipal motor vehicles); *Ohio*: Ohio Rev. Code (Baldwin, 1953) §3327.09 (school buses); *Oregon*: Ore. Rev. Stat. (1953) §332.180 (schools); *Pennsylvania*: Pa. Stat. Ann. (Purdon, 1954 Supp.) tit. 24, §7-774 (school employees); *South Dakota*: S.D. Laws (1955) c. 199 (city and

ing⁷ the subdivisions to procure liability or indemnity insurance, or requiring the officers or agents of such governmental units to take out bonds for faithful performance.⁸ Some of these statutes provide for suit directly against the insurer,⁹ while at least one provides that suit first be brought against the insured to determine the issue of liability.¹⁰ The statutes are usually silent as to the carrying of insurance to cover losses for which there is no legal liability under the governmental-proprietary distinction. However, the majority of such permissive statutes are designed to cover the school bus problem, and this is normally held to be a governmental, non-liability area.¹¹ Some subdivisions, it should be noted, carry insurance without any statutory authorization.¹²

II. *Effect Upon Municipal Corporation*

The traditional immunity of municipal corporations to liability for torts is double-edged, consisting of both an immunity to suit and an immunity to legal liability for the tort. The distinction is an important one, for when the insurance policy provides that judgment must be obtained against the insured before the insurer is liable upon the policy, a waiver of the municipal corporation's immunity to liability is of no benefit to the injured person if its immunity to suit is not also waived. Also, the mere fact that the municipality's immunity to suit is waived does not necessarily ren-

county hospitals); *Texas*: Tex. Civ. Stat. (Vernon, 1949) art. 6166z10; *West Virginia*: W.Va. Code (1949) §1774(7) (school bus drivers).

⁷ *Connecticut*: Conn. Rev. Gen. Stat. (1949; Supp. 1953) §§680, 774C (fire truck drivers, school employees); *Georgia*: Ga. Code Ann. (1952) tit. 32, §§32.429 and 32.431 (school buses); *Idaho*: Idaho Code (1947) §§33-801 (school buses); *Pennsylvania*: Pa. Stat. Ann. (Purdon, Supp. 1954) tit. 71, §634 (state motor vehicles); *Vermont*: Vt. Laws (1949) No. 243, §5 (school bus driver must take and pay for the insurance); *Virginia*: Va. Code (1950) §§22.284 to 22.294 (school bus drivers); *Wisconsin*: Wis. Laws (1953) c. 90, §109 (school buses); *Wyoming*: Wyo. Comp. Stat. Ann. (Supp. 1953) §67-647 (school board or driver must pay).

⁸ Tenn. Code Ann. (Williams, 1934) §2326.5 (school bus drivers). In *Rogers v. Butler*, 170 Tenn. 125, 92 S.W. (2d) 414 (1935), this statute was interpreted to give the school board authority to purchase liability insurance as an alternative way of fulfilling the duty of safe transportation of school children.

⁹ Ga. Code Ann. (1952) tit. 32, §§32-429, 32-431; Okla. Stat. (Supp. 1954) tit. 69, §§30.11 and 30.15. See *Rome v. London and Lancashire Indemnity Co.*, (La. App. 1936) 169 S. 132, in which La. Gen. Codes (Dart, 1932) §4248 [since repealed and replaced by La. Rev. Stat. (1950) tit. 22, §655] is so interpreted.

¹⁰ Ky. Rev. Stat. (1953) §160.310.

¹¹ 5 LEGAL NOTES ON LOCAL GOVERNMENT 358 (1940).

¹² See *Jones v. Scofield Bros., Inc.*, (D.C. Md. 1947) 73 F. Supp. 395; *Marmor v. Port of New York Authority*, 203 Misc. 568, 116 N.Y.S. (2d) 177 (1952); *Thomas v. Broadlands Community Consol. School District*, 348 Ill. App. 567, 109 N.E. (2d) 636 (1952); *Tracy v. Davis*, (D.C. Ill. 1954) 123 F. Supp. 160.

der the municipality itself liable, as the purpose underlying the waiver of immunity to suit may be just to determine the insurer's liability.

A. *Waiver of Immunity to Tort Liability.* The problem of whether a municipal corporation waives its immunity to tort liability by carrying insurance has three possible solutions: (1) the municipality does not waive its immunity to tort liability at all; (2) immunity is waived to the extent of the insurance coverage; or (3) immunity is completely waived.

The majority of courts which have had occasion to consider the problem have held that the subdivision does not waive its immunity by carrying the insurance.¹³ This result has obtained even where the policy contained a provision whereby insurer agreed not to avail itself of the immunity of the insured.¹⁴ The theory behind these decisions is that a governmental subdivision's tort immunity is a sovereign attribute which may be waived only by the state legislature and not through the action of either the subdivision itself or any of its officers or agents. In those states with statutes merely authorizing the carrying of insurance, it has been held that the subdivision is authorized to insure only against those risks for which it might legally be liable, and that the carrying of insurance cannot, therefore, create liability where none existed before.¹⁵ This result is especially clear where the policy is one of indemnity only. Some statutes which provide that a subdivision must carry insurance also provide that payment of the premiums will in no way impose liability on the subdivision.¹⁶ One jurisdiction which authorizes the procurement of liability insurance has provided that the procurement of such insurance shall create no new liability on the part of the insured, but that the insured may be sued to determine the liability of the insurer.¹⁷

¹³ *Burns v. American Casualty Co.*, 127 Cal. App. 198, 269 P. (2d) 656, *affd.* on rehearing (Cal. App. 1954) 273 P. (2d) 605; *Lambert v. New Haven*, 129 Conn. 647, 30 A. (2d) 923 (1943); *Benton v. Board of Education*, 201 N.C. 653, 161 S.E. 96 (1931); *Cushman v. County of Grafton*, 97 N.H. 32, 79 A. (2d) 630 (1951); *Texas Prison Board v. Cabeen*, (Tex. Civ. App. 1942) 159 S.W. (2d) 523. *Contra*: *Thomas v. Broadlands Community Consol. School District*, 348 Ill. App. 567, 109 N.E. (2d) 636 (1952); *Tracy v. Davis*, (D.C. Ill. 1954) 123 F. Supp. 160.

¹⁴ *Taylor v. Board of Education*, 292 Ky. 767, 167 S.W. (2d) 700 (1942); *Stephenson v. Raleigh*, 232 N.C. 42, 59 S.E. (2d) 195 (1950); *Marmor v. Port of New York Authority*, 203 Misc. 568, 116 N.Y.S. (2d) 177 (1952); *Pohland v. Sheyboygan*, 251 Wis. 20, 27 N.W. (2d) 736 (1947).

¹⁵ *Hummer v. School City of Hartford City*, (Ind. App. 1953) 112 N.E. (2d) 891; *Texas Prison Board v. Cabeen*, (Tex. Civ. App. 1942) 159 S.W. (2d) 523.

¹⁶ Ga. Code Ann. (1952) §§32-429, 32-431; Minn. Stat. Ann. (1947) §§471.42, 471.43.

¹⁷ Ky. Rev. Stat. (1953) §160.310. See *Taylor v. Board of Education*, 292 Ky. 767,

In yet other jurisdictions, a direct action against the insurer may be maintained, either by virtue of statutory authorization¹⁸ or provisions of the policy.¹⁹ Where the statute itself provides for a direct action against the insurer, allowing no action directly against the subdivision, the result would seem to be to waive the subdivision's immunity from liability to the extent of the insurance coverage, while retaining the subdivision's immunity from suit. In this situation, the question may arise as to whether the insurer may avail itself of the subdivision's defense of immunity. This problem will be discussed later.

When the issue arises in the context of an employee's bond for faithful performance, the situation is similar. It has been held that a party injured by the tort of the employee cannot sue on the bond, nor can he sue the subdivision directly, as the bond is payable to the subdivision, and the injured party is neither party, privy, nor beneficiary to the contract.²⁰

When the subdivision procures insurance without statutory authorization, the attitude of some courts has been that, since the subdivision could not waive its immunity from tort liability by its own act, the procurement by it of insurance against liability for torts for which it was not otherwise liable is an *ultra vires* act.²¹ Other courts have merely stated that, in the absence of legislative imposition of tort liability, a governmental subdivision cannot impose such liability upon itself.²²

Flying in the face of the majority view, two states have held that when a governmental subdivision carries insurance against claims for which it would not otherwise be liable, the subdivision waives its immunity to tort liability, as well as its immunity to suit, to the extent of the insurance coverage.²³ The theory of

167 S.W. (2d) 700 (1942); *Standard Accident Ins. Co. v. Board of Education*, (D.C. Ky. 1947) 72 F. Supp. 142.

18 Ga. Code Ann. (1952) tit. 32, §§32-429, 32-431; Okla. Stat. (Supp. 1954) tit. 69, §§30.11 and 30.15. See *Rome v. London and Lancashire Indemnity Co.*, (La. App. 1936) 169 S. 132, in which La. Gen. Codes (Dart, 1932) §4248 is so interpreted. See note 9 *supra*.

19 *McCaleb v. Continental Casualty Co.*, 132 Tex. 65, 116 S.W. (2d) 679 (1938).

20 *Benton v. Board of Education*, 201 N.C. 653, 161 S.E. 96 (1931).

21 *Lambert v. New Haven*, 129 Conn. 647, 30 A. (2d) 923 (1943); *Boice v. Board of Education*, 111 W. Va. 95, 160 S.E. 566 (1931); *Board of Education v. Commercial Casualty Ins. Co.*, 116 W. Va. 503, 182 S.E. 87 (1935). *Contra*: *Thomas v. Broadlands Community Consol. School District*, 348 Ill. App. 567, 109 N.E. (2d) 636 (1952); *Tracy v. Davis*, (D.C. Ill. 1954) 123 F. Supp. 160.

22 See note 2 *supra*.

23 *Rogers v. Butler*, 170 Tenn. 125, 92 S.W. (2d) 414 (1935); *City of Kingsport v. Lane*, 25 Tenn. App. 183, 243 S.W. (2d) 289 (1951); *Bailey v. Knoxville*, (D.C. Tenn.

the Tennessee and Illinois courts is that the basis for the rule of non-liability is that the subdivision ordinarily has no fund from which to pay a judgment, but that when, by carrying insurance, it creates such a fund, it becomes liable for the tort.

No case has been found which holds that the carrying of insurance is a complete waiver of tort immunity and creates full liability for the judgment obtained by the injured party.²⁴

B. *Waiver of Immunity From Suit.* The problem of whether a governmental subdivision waives its immunity from suit by carrying liability insurance also has three possible solutions: (1) the subdivision completely waives its immunity to suit; (2) it waives its immunity to suit solely for the purpose of determining the liability of the insurer; or (3) it does not waive its immunity to suit at all.

As has been seen, some jurisdictions hold that a governmental subdivision, by taking out insurance, completely waives its immunity to suit as well as its immunity to tort liability to the extent of the insurance coverage.²⁵ The net effect of these decisions is that the subdivision is equally liable with the insurer, but that no funds beyond the amount of the insurance may be used to satisfy the judgment.

Some decisions have held that, by carrying liability insurance, a governmental subdivision waives its immunity to suit for the purpose of determining the liability of the insurer.²⁶ This result obtains not only in Kentucky, where there is statutory authorization both for the procurement of insurance and for the suit against

1953) 113 F. Supp. 3, noted in 52 MICH. L. REV. 457 (1954). [This case, a suit against an airport run by a municipal corporation which had acquired insurance, was so decided despite Tenn. Code. Ann. (Williams, 1934) §2726.22, which forbids such suits against airports]; Thomas v. Broadlands Community Consol. School District, 348 Ill. App. 567, 109 N.E. (2d) 636 (1952); Tracy v. Davis, (D.C. Ill. 1954) 123 F. Supp. 160. In Illinois there is no statute authorizing insurance coverage.

²⁴ New York, through interpretation of a statute abolishing state immunity, has held that since municipal immunity is a derivative immunity, it, too, is gone. This is applied to all municipal employees on municipal business. See Lloyd, "Municipal Tort Liability in New York," 23 N.Y. UNIV. L. Q. REV. 278 (1948).

²⁵ Rogers v. Butler, 170 Tenn. 125, 92 S.W. (2d) 414 (1935); City of Kingsport v. Lane, 35 Tenn. App. 183, 243 S.W. (2d) 289 (1951); Bailey v. Knoxville, (D.C. Tenn. 1953) 113 F. Supp. 3, noted in 52 MICH. L. REV. 457 (1954); Thomas v. Broadlands Community Consol. School District, 348 Ill. App. 567, 109 N.E. (2d) 636 (1952); Tracy v. Davis, (D.C. Ill. 1954) 123 F. Supp. 160.

²⁶ Taylor v. Board of Education, 292 Ky. 767, 167 S.W. (2d) 700 (1942); Standard Accident Ins. Co. v. Board of Education, (D.C. Ky. 1947) 72 F. Supp. 142. See also Brooks v. Clark Co., 297 Ky. 549, 180 S.W. (2d) 300 (1944).

the subdivision,²⁷ but would also seem to follow from the Tennessee and Illinois decisions.²⁸

Other jurisdictions which have passed upon this question have treated the dual immunity of the subdivision as one, and have refused to allow the maintenance of the suit against the subdivision, even for the purpose of determining the liability of the insurer.²⁹

III. *Effect Upon Insurer of Carriage of Insurance Against Tort Liability by Municipal Corporation*

A multitude of problems beset the insurer which insures a municipal corporation against liability for torts committed by its agents. The first problem which arises is whether the insurer may be sued directly upon the policy. If not, and if the insured has not waived its immunity to suit by carrying the insurance, the insured may attempt to recover the premiums paid on the policy. If the insurer may be sued directly on the policy by the injured party, the question then becomes whether the insurer may avail itself of the insured's defense of immunity to tort liability, providing again that such immunity is not waived by the carrying of the insurance. In those jurisdictions where the carriage of insurance against liability for torts committed in the performance of governmental functions is considered to be an ultra vires act on the part of the insured,³⁰ there is an issue as to whether the insurer may avail itself of this defense as well. And where the insurer may avail itself of one or both of these defenses, the problem arises, again, whether the insured may recover the premiums paid on the policy.

The question of whether the insurer may be sued directly upon the insurance policy by the person injured turns upon the language of the insurance contract itself. The terms of a liability insurance contract ordinarily provide that the insurer's obligation arises out of the legal liability of the insured, and that "no action shall lie against the company—until the amount of the insured's obliga-

²⁷ Ky. Rev. Stat. (1953) §160.310.

²⁸ See note 25 supra.

²⁹ Stephenson v. Raleigh, 232 N.C. 42, 59 S.E. (2d) 195 (1950); Utz v. Board of Education, 126 W. Va. 823, 30 S.E. (2d) 342 (1944); Pohland v. Sheyboygan, 251 Wis. 20, 27 N.W. (2d) 736 (1947); Wallace v. Board of Education, 287 Ky. 454, 153 S.W. (2d) 915 (1941). The Kentucky statute authorizing insurance was passed after the last case and the result would now be different. See Taylor v. Board of Education, 292 Ky. 767, 167 S.W. (2d) 700 (1942).

³⁰ See note 21 supra.

tion to pay shall have been finally determined—by judgment against the insured after actual trial.”³¹ In some cases, the injured party has been allowed to sue the insurer directly without first suing the insured. This result can be reached either by statutory authorization³² or when the policy itself so provides.³³

It is apparent that where the insurance policy contains a “no action” clause, and where there is no statutory authority for maintenance by the injured person of a direct action against the insurer, the insurer may not be sued directly on the insurance policy by the injured party. In Tennessee and Illinois, where the governmental subdivision waives both its immunity to suit and its immunity to tort liability by carrying insurance,³⁴ no problem need arise insofar as the rights of the injured party are concerned. In such a case, he may maintain an action directly against the subdivision. If, for some technical or procedural reason, the insurer is not liable on the policy, the municipality would probably not be required to pay the judgment out of public funds.³⁵

In the majority of jurisdictions, where the governmental subdivision has not waived its immunity to suit or its immunity to tort liability by carrying liability insurance, and no action may be maintained by the injured person directly against the insurer, the injured party generally has no right of recovery at all.³⁶ A question then arises whether the insured may recover the premiums it paid on the policy. In those jurisdictions in which the question has been litigated, the answer has been in the affirmative.³⁷ The reason behind the recovery is illegality of consideration, as the insured had no power to insure against risks for which it was not

³¹ 33 MINN. L. REV. 634 at 635 (1949).

³² See notes 9 and 18 *supra*.

³³ McCaleb v. Continental Casualty Ins. Co., 132 Tex. 65, 116 S.W. (2d) 679 (1938).

³⁴ City of Kingsport v. Lane, 35 Tenn. App. 183, 243 S.W. (2d) 289 (1951); Bailey v. Knoxville, (D.C. Tenn. 1953) 113 F. Supp. 3, noted in 52 MICH. L. REV. 457 (1954); Thomas v. Broadlands Community Consol. School District, 348 Ill. App. 567, 109 N.E. (2d) 636 (1952); Tracy v. Davis, (D.C. Ill. 1954) 123 F. Supp. 160.

³⁵ But see Bailey v. Knoxville, (D.C. Tenn. 1953) 113 F. Supp. 3, noted in 52 MICH. L. REV. 457 (1954).

³⁶ Cushman v. County of Grafton, 97 N.H. 32, 79 A. (2d) 630 (1951); Marmor v. Port of New York Authority, 203 Misc. 568, 116 N.Y.S. (2d) 177 (1952); Texas Prison Board v. Cabeen, (Tex. Civ. App. 1942) 159 S.W. (2d) 523; Boice v. Board of Education, 111 W. Va. 95, 160 S.E. 566 (1931). However, the action was allowed against the officers personally in Hummer v. School City of Hartford City, (Ind. App. 1953) 112 N.E. (2d) 891, and the policy had already lapsed so that the question was left open in Utz v. Board of Education, 126 W. Va. 823, 36 S.E. (2d) 342 (1944), and there was an unjoined defendant in Jones v. Scofield Bros. Inc., (D.C. Md. 1947) 73 F. Supp. 395.

³⁷ Burns v. American Casualty Co., 127 Cal. App. 198, 269 P. (2d) 656, *affd.* on rehearing (Cal. App. 1954) 273 P. (2d) 605; Board of Education v. Commercial Casualty Ins. Co., 116 W. Va. 503, 182 S.E. 87 (1935).

legally liable.³⁸ Another possible reason for allowing recovery would be failure of consideration. It could be argued that the sole purpose in carrying the insurance was to benefit persons injured by torts of the subdivision, and, since those persons are not able to benefit from the insurance, the consideration has failed.

In jurisdictions where, with or without the benefit of statutory mandate, the injured person may maintain an action directly against the insurer, the latter may attempt to assert defenses based on insured's immunity. In general, the insurer may raise the defense that the insured has incurred no legal liability for the tort committed, and that, therefore, no wrong had been done to the injured party for which compensation could be obtained by him.³⁹ However, due to the fact that the reason behind the carrying of liability insurance by an immune entity is a desire to repay what it considers to be its moral obligations, it is quite common to find a provision in these policies to the effect that the insurer will not avail itself of the insured's defense of immunity.⁴⁰ A few courts, even in the absence of such a clause, have held that the defense is personal to and solely for the benefit of the insured, and that only the insured may take advantage of it.⁴¹

In those jurisdictions where the carrying of liability insurance by an immune entity is an *ultra vires* act, the insurer, in a direct action against it by the injured person, may raise this defense to defeat recovery.⁴²

IV. Conclusion

In general, the carrying of liability insurance is not a waiver of immunity from suit or from tort liability. This result is historically supportable. However, it often results in a finding that an insurer is not liable on a policy because the insured cannot be sued. This defeats the purpose of the policy, and to allow the immune entity to recover the premiums is no answer

³⁸ *Ibid.*

³⁹ *Hummer v. School City of Hartford City*, (Ind. App. 1953) 112 N.E. (2d) 891; *Texas Prison Board v. Cabeen*, (Tex. Civ. App. 1942) 159 S.W. (2d) 523; *Pohland v. Sheyboygan*, 251 Wis. 20, 27 N.W. (2d) 736 (1947); *Brooks v. Clark Co.*, 297 Ky. 549, 180 S.W. (2d) 300 (1944). See 33 MINN. L. REV. 634 at 640 (1949).

⁴⁰ *Stephenson v. Raleigh*, 232 N.C. 42, 59 S.E. (2d) 195 (1950); *City of Kingsport v. Lane*, 35 Tenn. App. 183, 243 S.W. (2d) 289 (1951); *Pohland v. Sheyboygan*, 251 Wis. 20, 27 N.W. (2d) 736 (1947). See 33 MINN. L. REV. 634 at 640 (1949).

⁴¹ *Rome v. London and Lancashire Indemnity Co.*, (La. App. 1936) 169 S. 132; *Burns v. American Casualty Co.*, 127 Cal. App. 198, 269 P. (2d) 656, *affd.* on rehearing (Cal. App. 1954) 273 P. (2d) 605. See 33 MINN. L. REV. 634 at 641 (1949).

⁴² See 33 MINN. L. REV. 634 at 639 (1949). *Contra*, *McCaleb v. Continental Casualty Co.*, 132 Tex. 65, 116 S.W. (2d) 679 (1938).

to the increasing problems of municipal torts. But a trend toward increasing municipal liability is discernible⁴³ and ought to be given added judicial impetus. By scrapping the protection-of-public funds basis of the immunity where insurance makes this basis no longer sound, or by removing immunity to suit in statutes giving permission to insure, the public desire for the fair compensation of all injured parties could be given a realistic, economical, and just fulfillment.

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⁴³ Note, e.g., the present state of the law in New York (see note 24 supra), Illinois and Tennessee (see note 25 supra).

* This comment was originally written by Alice Austin, and then revised and brought up to date by William C. Becker.